

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001028-196

(Class Action)
SUPERIOR COURT

CHRISTOPHER OUELLET, domiciled at

[REDACTED]

Applicant

-vs-

LASIK M.D. INC., legal person having its head office at 1180 Drummond Street, Suite 400, district of Montreal, Quebec, H3G 2S1

and

L.M.D. GMA L.P., legal person having its head office at 1180 Drummond Street, Suite 400, district of Montreal, Quebec, H3G 2S1

and

DR. MOUNIR BASHOUR, ophthalmologist, having his place of employment at 1250 René-Lévesque boulevard west, MD level, district of Montreal, Quebec, H3B 4W8

and

VALHALLA & CAMELOT ENTERPRISES INC., legal person having its head office at 4175 Sainte-Catherine Street West, suite 403, Westmount, district of Montreal, Quebec, H3Z 3C9

Defendants

**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF**
(ARTICLE 571 AND FOLLOWING C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE CLASS ACTION DIVISION IN THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:

I. INTRODUCTION

1. Applicant wishes to institute a class action on behalf of the following class, of which he is a member, namely:

Class:

All persons who have received laser vision correction surgery at Lasik MD.

(hereinafter the “**Class**”)

Corneal Neuralgia Subclass:

All persons who have developed corneal neuralgia, also known as chronic postoperative pain, after receiving laser vision correction surgery at Lasik MD.

(hereinafter the “**Corneal Neuralgia Subclass**”)

or any other group to be determined by the Court;

2. On its website, Defendant Lasik M.D. Inc. (hereinafter “**Lasik MD**”) boasts that:

“LASIK MD is Canada’s only national provider of laser vision correction, delivering high-quality LASIK at affordable prices. With **over 30 clinics in nine provinces in Canada**, we want to make laser vision correction accessible to everyone. Our team is made up of more than 50 surgeons who are among the most experienced in the field”

Applicant communicating a screen capture of Lasik MD’s website (www.lasikmd.com) as **Exhibit P-1**;

3. Lasik MD is an office of doctors or specialist surgeons carrying on in industry of laser eye surgery clinics, with its head office in Montreal, Quebec, as it appears from an extract of the CIDREQ communicated herewith as **Exhibit P-2**;
4. Defendant Dr. Mounir Bashour, ophthalmologist (hereinafter “**Dr. Bashour**”) is one of the surgeons at Lasik MD;
5. Defendant Valhalla & Camelot Enterprises Inc. is a company offering technical consultation services whose president, secretary and treasurer is Dr. Bashour, as

appears from an extract of the CIDREQ communicated herewith as **Exhibit P-3**;

6. Defendant L.M.D. GMA L.P., a limited partnership, is an office of doctors and specialist surgeons, as it appears from an extract of the CIDREQ communicated herewith as **Exhibit P-4**;
7. Given the close ties between the Defendants and considering that their obligations, as more fully detailed below, were contracted for the operation of an enterprise, they are presumed solidarily liable for the acts and omissions of the other;

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

1) The facts alleged appear to justify the conclusions sought:

A) Applicant's claim against Defendants for (i) failure of the duty to inform (ii) false representations and (iii) hidden defect

8. On June 13, 2014, Applicant consulted Lasik MD because he wanted to get lasik surgery (he did not like wearing glasses). Before his first consultation, Applicant reviewed and relied on advertising from Lasik MD which stated that:
 - Lasik is the safest elective medical procedure;
 - Risks are small, minor, and easily treatable;
 - Complications are "extremely rare" and range from 1 in 50,000 to 1 in 100,000;
 - Lasik patients "say they feel little or no pain";
9. Applicant communicates herewith his medical file from Lasik MD as **Exhibit P-5**;
10. During his first consultation on June 13, 2014, Applicant met with a technician at Lasik MD, not with the surgeon who performed his procedure (or any other surgeon). The Lasik MD technician told him that he has big pupils and it is probable that he develops halos and starbursts (especially at night). He was also told that he would have dry eyes for about 3 to 6 months. He [...] was provided with a "Lasik Information Booklet" from Lasik MD similar to the 2016 version communicated herewith as **Exhibit P-6** (Applicant was given the 2015 version and consents in advance to Lasik MD filing same as appropriate evidence);
11. Applicant accepted these risks because he did not consider them to be material, as it from the consent form communicated herewith as **Exhibit P-7**;

12. Applicant also agreed to pay \$3,550.00 for the cost of the lasik surgery, as it appears from his invoice communicated herewith as **Exhibit P-8**;
13. It is important to note that neither the consent form (Exhibit P-7), nor the 2016 Lasik Information Booklet (Exhibit P-6), nor the 2015 version (which Applicant invites Lasik MD to file) divulges the risk of a serious and devastating medical condition called "**corneal neuralgia**" also known as complex regional pain syndrome, that the Applicant would later develop as a result of his surgery;
14. On January 26, 2015, the Applicant underwent the lasik surgery performed by Dr. Bashour, as appears from Exhibit P-5. On the date of the surgery, and prior to undergoing the surgery, the Applicant viewed some advertising on a screen in the Lasik MD clinic bearing the Lasik MD brand and stating "complications following LASIK are extremely rare, minor and treatable". He was then given and signed the consent form (Exhibit P-7). There was no consultation with Dr. Bashour before the surgery, and Dr. Bashour did not disclose or discuss the risk of "corneal neuralgia", chronic postoperative pain or chronic regional pain syndrome;
15. The surgery went as planned and initially the results were normal, as it appears from the notes taken by Lasik MD during the post-surgery appointments contained in Exhibit P-5 (February 10, 2015, March 28, 2015);
16. On December 7, 2015, Applicant made an emergency appointment with Lasik MD because he developed severe pain and inflammation in both his eyes (Applicant couldn't look at his computer screen or any monitors). Applicant constantly felt a burning feeling in his eyes;
17. Following the appointment of December 7, 2015, Applicant was told by Lasik MD that he had blepharitis (an inflammation of the eyelids) and that he should have better hygiene of eyelids (Exhibit P-5). On November 2, 2016, the Applicant would learn that this diagnosis was wrong;
18. On January 21, 2016, the Applicant once again consulted with Lasik MD as he continued to feel excruciating pain in both his eyes (they became very dry and extremely sensitive to light). Applicant had trouble keeping his eyes open. Lasik MD diagnosed him with and gave him a treatment for dry eye. On November 2, 2016, the Applicant would learn that this diagnosis was wrong;
19. On February 5, 2016, the Applicant returned to Lasik MD for help because he continued to experience the same horrible symptoms (including the burning sensation in both of his eyes). Lasik MD prescribed an anti-inflammatory and restasis. Once again, Lasik MD treated him as a dry eye. Martine Beaulieu of Lasik MD also told him that with restasis it takes 6 months to take effect and that he should see an improvement in that time. On November 2, 2016, the Applicant would learn that this diagnosis was wrong;
20. On March 23, 2016, the Applicant returned to Lasik MD as he continued to suffer

severe pain in both his eyes. Lasik MD put plugs in his eyes for dry eye and told him to use warm compresses. They prescribed restasis for 6 to 12 months and an anti-inflammatory. On November 2, 2016, the Applicant would learn that this diagnosis was wrong;

21. Towards the end of May 2016, the Applicant began working as a tobacco inspector for the *Ministère de Santé et Services sociaux du Québec*. However, because this job required that he work on a computer screen, he could no longer perform this function as it was extremely painful for his eyes to look at a screen. The Applicant was forced to leave this job at the end of September 2016;
22. The pain to his eyes following the lasik surgery became so unbearable to the Applicant that he became depressed and even contemplated suicide several times. His parents had him institutionalized for his own safety;
23. On September 20, 2016, the Applicant returned to Lasik MD to see Dr. Martine Beaulieu (“Dr. Beaulieu”) and informed her that he wants to see a surgeon because his life has been a living hell since the eye surgery (Dr. Beaulieu took detailed notes of this appointment in Exhibit P-5);
24. During this appointment the Applicant told Dr. Beaulieu that he had recently consulted with another health professional and that his symptoms are way too much out of proportion to be dry eye and he insisted on seeing a surgeon. Dr. Beaulieu advised the Applicant that he should not see a surgeon because he had just started the treatment she previously recommended and that they have to wait and see if it works. On November 2, 2016, the Applicant would learn that this diagnosis was wrong;
25. Around this time, the Applicant started doing research online. He discovered a Facebook Group called “Lasik Complications Facebook” with approximately 6000 members who experienced laser complications. The Applicant told his story on this page and someone suggested that based on the symptoms he described he may actually have corneal neuralgia and not dry eye;
26. On October 14, 2016, the Applicant consulted with Dr. Beaulieu at Lasik MD and brought articles with him about corneal neuralgia. He explained to her that he believes this could be what he has and informed her that he wants to see the surgeon. During this meeting he reiterated that his life has been completely ruined by the lasik surgery. Despite his pleas, Dr. Beaulieu insists on Applicant continuing the treatment for dry eye only (which was the wrong diagnosis all along). On November 2, 2016, the Applicant would learn that this diagnosis was wrong;

The November 2, 2016 Consultation at Lasik MD:

27. On November 2, 2016, Dr. Bashour (the surgeon) finally agrees to meet with the Applicant at Lasik MD, as it appears from Exhibit P-5;

28. For the first time, on November 2, 2016, Dr. Bashour finally gives Applicant the correct diagnosis of corneal neuralgia (see Exhibit P-5);
29. Corneal neuralgia is a condition that will cause Applicant to suffer pain every day for the rest of his life and there is no treatment (for instance, Applicant will constantly feel a burning sensation in his eyes and as a result cannot watch regular screens and must use a special and very expensive black and white electronic ink screen with no back light);
30. What happens next during the November 2, 2016, consultation is shocking;
31. Dr. Bashour admits to the Applicant that he is his fifth or sixth patient that he knows about who developed corneal neuralgia after lasik surgery and that one of his patients with corneal neuralgia actually killed himself;
32. Dr. Bashour acknowledges that this illness (corneal neuralgia) is the cause of the Applicant's suffering and what is ruining his life;
33. Dr. Bashour admits that the people he meets who have corneal neuralgia are the most depressed and unhappy people he has ever seen;
34. Dr. Bashour then recommends to Applicant that he purchase a book called *The Presence Process* by Michael Brown about spiritual healing to help him, Applicant communicating this "prescription" as **Exhibit P-9**;
35. Desperate and hopeless, Applicant purchased the book for approximately \$20 and began reading it. After three pages the Applicant realized that this book had nothing to do with treating corneal neuralgia and stopped reading it;
36. Following the consultation of November 2, 2016, Dr. Bashour recommended that Applicant receive a refund (as indicated in Dr. Bashour's notes in Exhibit P-5);
37. However, in order to receive the refund of \$3,550.00, the Applicant was asked to give a release to all of the Defendants named herein, to never discuss his situation on social media and that he can no longer receive any complimentary eye exams from Lasik MD, as it appears from **Exhibit P-10**;
38. Applicant refused to sign this release and has never been compensated by any of the Defendants;
39. On November 16, 2016, Applicant consulted once again with Dr. Bashour;
40. During this last consultation, Dr. Bashour admits to Applicant that the Defendants knew about corneal neuralgia and that they never disclosed this risk. As such, Applicant's *Charter* right to his personal security has been violated by the Defendants' omissions and gross and intentional negligence as described herein;
41. The Applicant emphasizes that Lasik MD only recently modified its website and

marketing concerning what they refer to as the “*myths & facts*” about Lasik surgery. For instance, in November of 2016, Applicant took a picture of a marketing screen inside Lasik MD (1250 René-Lévesque West, in Montréal) that contained the following “myth” and “fact”, Applicant communicating **Exhibit P-11**:

MYTH:

I WILL HAVE SOME KIND OF TERRIBLE SIDE EFFECT.

FACT:

COMPLICATIONS ARE EXTREMELY RARE

Complications following LASIK are rare, minor and **treatable**. You may, however, experience a surge in confidence following the procedure. We told you it'd be life-changing.

42. Lasik MD's declaration that it is a myth that someone can “have some kind of terrible side effect” is a misrepresentation;
43. Lasik MD continued making this misrepresentation, as it appears from a wayback machine screen capture of their website (<https://www.lasikmd.com/what-to-expect/myths-facts>) as of September 6, 2018, communicated as **Exhibit P-12**:

FEAR #6: I WILL HAVE SOME KIND OF TERRIBLE SIDE EFFECT.

FACT: COMPLICATIONS ARE EXTREMELY RARE.

Complications following LASIK are rare, minor and **treatable**. In fact, the main side effect you will experience is the feeling of freedom from no longer needing to wear glasses or contacts.

44. Up until today on its website (<https://www.lasikmd.com/what-to-expect/myths-facts>) and in its advertising, Lasik MD declares the following, Applicant communicating **Exhibit P-13**:

“The vast majority of complications following LASIK are rare, minor and **treatable**. In fact, the main side effect you will experience is the feeling of freedom from no longer needing to wear glasses or contacts.”

45. It appears that at some point in 2019, Lasik MD added the terms “*The vast majority of*” before the words “complications following LASIK are rare”;
46. Regardless, these representations are still false because in the Applicant's case (and for others similarly situated) the complications were not a myth, were not minor and were not treatable (this is evidenced by Dr. Bashour prescribing a spiritual book);

47. On November 14, 2019, CBS News published an article titled "*LASIK eye surgery should be taken off market, former FDA adviser says*", which includes the following, Applicant communicating **Exhibit P-14**:

"Still, the FDA's own website is filled with stories of serious complications. Patients reported "relentless eye pain," dizziness and detached retinas, and told the agency: "**LASIK ended my life**" and "this procedure needs to stop."

"Essentially we ignored the data on vision distortions that persisted for years," said Morris Waxler, a retired FDA adviser who voted to approve LASIK. He now says that vote was a mistake.

"I re-examined the documentation ... and I said, 'Wow this is not good,'" Waxler said.

Waxler said his own analysis of **industry data shows complication rates between 10 and 30%**. In 2011, he petitioned the FDA to issue a voluntary recall of LASIK. Three years later, the agency denied that request and now tells CBS News it "has not found any new safety concerns associated with LASIK devices."

48. Since November 2016, Applicant continued living in chronic pain, depression and is unable to enjoy life like he used to as a result of the burning and sharp pains in his eyes following the lasik surgery;
49. Towards the end of 2017 and following a post that he made on Facebook, Applicant was contacted by Lasik MD in order to ask him to meet with one of the owners (he was told) named Pierre Demers;
50. Mr. Demers asked Applicant if wanted a compensation and Applicant replied that monetary compensation would be great. However, once again Lasik MD refused to compensate him;
51. The Defendants failed in their legal obligation to adequately inform Applicant of the serious health risks and dangers associated to lasik eye surgery;
52. Had Applicant been informed and aware of the risk of corneal neuralgia and the true dangers associated to lasik eye surgery, he would have never undergone this procedure;
53. The Applicant was entitled to expect, and rightly expected, that the Defendants guarantee the quality and safety of the products and services that they advertise, sell and perform;
54. In addition to pecuniary losses (including the \$3,550.00 paid for the lasik eye surgery), this situation caused Applicant a severe depression, a lot of stress, inconvenience, frustration, severe loss of quality of life and loss of time from work

and the ability to work (he has a diploma in accounting and is not able to use it given that this work requires a lot of screen time). Applicant used to love playing video games which he can no longer do as a result of the corneal neuralgia;

55. Applicant has suffered ascertainable loss as a result of the Defendants' omissions, misrepresentations, failure to inform and gross negligence associated with the marketing and selling of their lasik eye surgery and hereby claims the following damages:

Damages	Amount
Reimbursement of the initial surgery	\$3,550.00
Trouble and inconvenience	\$25,000.00
Moral damages	\$100,000.00
Loss of work	\$500,000.00
Punitive damages for violation of s. 1 of Quebec's <i>Charter</i>	\$100,000.00
TOTAL:	\$728,550.00

56. Applicant's damages are a direct and proximate result of the Defendants' misconduct;

B) Applicant's claim for punitive damages (ss. 1 and 49 of Quebec's *Charter*)

57. Not only did the Defendants violate the law by failing to inform the Applicant of an important fact (i.e. the risks of developing corneal neuralgia), they intentionally continued performing lasik eye surgeries in Canada without informing other Class Members of this risk, and this despite the increase in the number of cases reported to Dr. Bashour and to Lasik MD over the last few years;
58. This type of conduct triggers a s. 1 *Charter* violation, because the Applicant's personal security has been compromised as a result of the Defendants' gross and intentional negligence, giving rise to a claim in punitive damages under s. 49;
59. The Defendants' violations were intentional, malicious, vexatious, and dangerous;
60. The Defendants' demonstrated through their behavior that they were more concerned about their bottom lines than about the safety and health of Class members;
61. In these circumstances, Applicant's claim for punitive damages in the amount of \$100,000.00 is justified;

2) The claims of the members of the Group raise identical, similar or related issues of law or fact:

62. All Class members have a common interest both in proving that Lasik MD failed to adequately inform them about the true risks associated to its lasik surgery and in maximizing the aggregate of the damages cause to them by the Defendants;
63. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the Defendants failed in their duty to inform about the health risks associated to lasik surgery in general and about the risk of corneal neuralgia in specific;
64. The claims of every member of the Class are founded on very similar facts to the Applicant's claims;
65. All Class members are entitled to expect that the Defendants guarantee the quality of the lasik surgery that they advertise, sell and perform and that they inform their patients about the important risks concerning same;
66. Consequently, all Class members not only overpaid Lasik MD when they had their lasik surgery performed, but those that developed corneal neuralgia will continue to pay for life;
67. By reason of the Defendants' unlawful conduct, Applicant and members of the Class have suffered damages, which they may collectively claim against the Defendants;
68. Each Class member is justified in claiming at least one or more of the following as damages:
 - Reimbursement of a portion or of the full costs of the lasik surgery (the latter for those who developed corneal neuralgia);
 - Trouble and inconvenience;
 - Loss of work;
 - Moral damages;
 - Punitive damages for violation of s. 1 of Quebec's *Charter*.
69. All of these damages to Class members are a direct and proximate result of the Defendants' faults;
70. The claims of every Class member are founded on very similar facts to the Applicant's claim;
71. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;

72. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, namely, the Defendants' failure to adequately inform Class members of the risks associated to lasik surgery;
73. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:
- a) Did the Defendants adequately inform their patients about the risks of lasik surgery in general?
 - b) Did the Defendants adequately inform their patients about the risks of corneal neuralgia?
 - c) Did the Defendants conceal their knowledge of the risk of corneal neuralgia and, if so, until when?
 - d) Is the responsibility of any of the Defendants engaged in view of the *Quebec Civil Code* or *Quebec Charter*?
 - e) If the responsibility of any of the Defendants is engaged, are Class members entitled to:
 - i. a reduction of their obligations and, if so, in what amount?
 - ii. damages for trouble and inconvenience and, if so, in what amount?
 - iii. damages for loss of work and, if so, in what amount?
 - iv. moral damages and, if so, in what amount?
 - v. punitive damages and, if so, in what amount?
 - f) Did Defendants act in bad faith?
 - g) When does prescription start for Class members and what are the factors common to the Class members regarding the impossibility in fact to act?
 - h) For corneal neuralgia subclass members who have entered into a "Receipt and Release" in favour of Lasik MD in exchange for a sum approximately equivalent to a refund of surgical fees, is that transaction vitiated by error, fraud or lesion pursuant to sections 1399, 1400, 1401 and 1407 of the *Quebec Civil Code*?

3) The composition of the Class:

74. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;

75. A September 7th, 2016 press release titled “*La Caisse finances LASIK MD’s international growth*” states that following as appears from **Exhibit P-15**:

“LASIK MD currently performs more than 60,000 surgeries annually and has completed more than 750,000 procedures since the company was established in 2001.”

76. A CTV article titled “*W5 investigates a rare but painful side effect of laser eye surgery*” published on October 19, 2018, reported on three (3) Canadians who were interviewed about their corneal neuralgia, Applicant communicating the article herewith as **Exhibit P-16** (the Applicant intends to refer to the video included online with the article available at: <https://www.ctvnews.ca/w5/w5-investigates-a-rare-but-painful-side-effect-of-laser-eye-surgery-1.4141117>);

77. In a 2015 study titled “*Corneal Neuralgia after LASIK*”, Ophthalmologist and cornea specialist Dr. Pedram Hamrah mentions the following, applicant disclosing the study as **Exhibit P-17**:

“Although dry eye syndrome is common after LASIK, the patients in this study were referred for dry eye syndrome that was persistent and unresponsive to standard therapy. In each case, the clinical signs of dry eye and tear metrics were inconsistent with the patient’s level of discomfort. Each patient reported symptoms of pain, burning, soreness, achiness, and light sensitivity. Foreign body sensation or grittiness was not a prominent feature for any of them. Unlike typical LASIK-associated dry eye disease, the symptoms experienced by these patients did not gradually wane with time after surgery but rather persisted or increased. We believe that these patients had dry eye syndrome that was neuropathic in etiology, warranting treatment of underlying neuralgia rather than treatment of aqueous deficient or evaporative dry eye. [...]

In summary, patients with persistent dry eye symptoms out of proportion to clinical signs after LASIK have a syndrome that may best be classified as corneal neuralgia. *In vivo* confocal microscopy can be informative as to the neuropathic basis of this condition. In keeping with current understanding of CRPS, early multimodal treatment directed toward reducing peripheral neurologic signaling is warranted to avoid subsequent centralization and persistence of pain on that basis. Distinguishing this syndrome from typical post-LASIK dry eye remains a challenge.

78. Applicant is aware of [...] 1,171 other Class members (who “signed-up” to this class action on class counsel’s website www.lpclex.com/lasik) among whom there are at least 19 other subclass members suffering from corneal neuralgia, 10 of whom are domiciled in Quebec, and many more who report symptoms similar to corneal neuralgia but who have not received a formal diagnosis. The

filing of the present class action has enabled others suffering from corneal neuralgia and other undisclosed complications of Lasik to come forward;

79. Indeed, after the publication of the CTV W5 investigation in October of 2018, in which Applicant was interviewed (Exhibit P-16), another post-lasik patient went public with her story, as it appears from a June 21, 2019 article titled "*Woman calls for more research on laser eye surgery after complications*" communicated herewith as **Exhibit P-18**;
 80. The number of persons included in the Class could be in the thousands;
 81. The names and addresses of all persons included in the Class are not known to the Applicant, however, all are likely in the possession of Defendants (in November of 2016, Dr. Bashour admitted to the Applicant that he was aware of 5 or 6 other Class members). Applicant is aware that at least 2 members of the corneal neuralgia subclass have entered into a "Receipt and Release" in favour of Lasik MD in exchange for a sum approximately equivalent to a refund of surgical fees (similar to the release filed as Exhibit P-10). Applicant hereby alleges that those members entered into said transactions in error or that they were induced by fraud (within the meaning of the *Civil Code of Quebec*);
 - 81.1 The Lasik MD Defendants have sought to refer to and file as evidence certain documents in the case of Gwendoline Prudhomme, which was filed as an individual case in British Columbia by her previous counsel. The signed waiver document communicated herewith as **Exhibit P-19** was provided to Ms. Prudhomme minutes prior to her surgery. Consistently with Lasik MD's practice in Applicant's case, Ms. Prudhomme was provided with the disclosure booklet communicated herewith as **Exhibit P-20** at her pre-operative appointment. Consistently with Lasik MD's practice in the Applicant's case, Ms. Prudhomme did not meet with any surgeon at her pre-operative appointment and instead met with a technician employed by Lasik MD;
 82. Class members could be numerous and dispersed across the province, across Canada and elsewhere;
 83. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
 84. In these circumstances, a class action is the only appropriate procedure for all of the Class members to effectively pursue their respective rights and have access to justice without overburdening the court system;
- 4) The Class member appointed as representative plaintiff is in a position to properly represent the class members:**
85. Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:

- a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
- b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
- c) His interests are not antagonistic to those of other Class and Sub-Class members;

86. Additionally, Applicant respectfully adds that:

- a) He contacted and mandated his attorneys to file the present application for the sole purpose of having his rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Defendants' fault and so that the Defendants can be held accountable;
- b) He also wants to make sure that the public is made aware of the true risks associated to lasik surgery, including the risks of corneal neuralgia;
- c) He is aware of several other Class members in the same situation as him and has helped them as much as he can in seeking treatment for corneal neuralgia;
- d) In December 2017 he created a Facebook group titled "*Lasik complications et problèmes Québec*" to help others going through the same horrifying experience as him post-lasik surgery;
- e) He has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;
- f) He cooperates and will continue to fully cooperate with his attorneys, who have experience in consumer protection-related class actions;
- g) He understands the nature of the action;

III. DAMAGES

- 87. During the Class Period the Defendants generated important revenues while intentionally failing to inform Class members of an important fact regarding the risks of corneal neuralgia;
- 88. Consequently, the Defendants have breached several obligations imposed on them by legislation in Quebec and Canada, including:
 - a) The *Civil Code of Quebec*, including sections 1399-1401, 1407, 1469 and 1473; and

- b) The Quebec *Charter*, section 1, thus rendering s. 49 applicable.
89. Moreover, Defendants failed in their obligation and duty to act in good faith and with honesty in their representations and in the performance of their obligations;
90. In light of the foregoing, the following damages may be claimed solidarily against the Defendants:
- a) compensatory damages, in an amount to be determined, on account of the damages suffered; and
 - b) punitive damages, in an amount to be determined, pursuant to s. 49 of the *Charter*;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

91. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
92. The conclusions that the Applicant wishes to introduce by way of an Originating Application are:

GRANT Plaintiff's action against Defendants on behalf of all Class members;

DECLARE the Defendants solidarily liable for the damages suffered by the Applicant and each of the Class members;

CONDEMN the Defendants solidarily to pay to each Class member a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay to each Class member punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants solidarily to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of

experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

93. The interests of justice favour that this Application be granted in accordance with its conclusions;

V. JURISDICTION

94. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because the Defendants are all domiciled in the judicial district of Montreal, province of Quebec, thus triggering article 3148(1) CCQ;
95. In light of the preceding, the Applicant has standing to represent an international class and the Superior Court of Quebec is the appropriate forum;

VI. PRESCRIPTION AND IMPOSSIBILITY TO ACT

96. Prescription should not run against Class members because it is impossible in fact for them to act;
97. Indeed, Class members could not have acted previously as they had no reason to suspect that the Defendants were concealing the risks of corneal neuralgia from them;
98. Additionally, in the case of the Applicant, prescription can only start running as of November 2nd, 2016, because up until that time the Defendants were telling him that he had simple dry eye (which was a disclosed risk) that would improve with treatment. Up until November 2nd, 2016, it was impossible for the Applicant to discover the negligence of the Defendants;
99. On November 1st, 2019, all of the Defendants expressly renounced to prescription from the period of November 1st, 2019 until November 15th, 2019, such that the Applicant's personal cause of action which started running on November 2nd, 2016 was extended to November 15th, 2019 (and therefore not prescribed).

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present application;
2. **AUTHORIZE** the bringing of a class action in the form of an Originating Application in damages;
3. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class and Sub-Class herein described as:

Class:

All persons who have received laser vision correction surgery at Lasik MD.

Corneal Neuralgia Subclass:

All persons who have developed corneal neuralgia, also known as chronic postoperative pain, after receiving laser vision correction surgery at Lasik MD.

or any other group to be determined by the Court;

4. IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did the Defendants adequately inform their patients about the risks of lasik surgery in general?
- b) Did the Defendants adequately inform their patients about the risks of corneal neuralgia?
- c) Did the Defendants conceal their knowledge of the risk of corneal neuralgia and, if so, until when?
- d) Is the responsibility of any of the Defendants engaged in view of the *Quebec Civil Code* or *Quebec Charter*?
- e) If the responsibility of any of the Defendants is engaged, are Class members entitled to:
 - i. a reduction of their obligations and, if so, in what amount?
 - ii. damages for trouble and inconvenience and, if so, in what amount?
 - iii. damages for loss of work and, if so, in what amount?
 - iv. moral damages and, if so, in what amount?
 - v. punitive damages and, if so, in what amount?
- f) Did Defendants act in bad faith?
- g) When does prescription start for Class members and what are the factors common to the Class members regarding the impossibility in fact to act?

- h) For corneal neuralgia subclass members who have entered into a "Receipt and Release" in favour of Lasik MD in exchange for a sum approximately equivalent to a refund of surgical fees, is that transaction vitiated by error, fraud or lesion pursuant to sections 1399, 1400, 1401 and 1407 of the Quebec Civil Code?

5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

GRANT Plaintiff's action against Defendants on behalf of all Class members;

DECLARE the Defendants solidarily liable for the damages suffered by the Applicant and each of the Class members;

CONDEMN the Defendants solidarily to pay to each Class member a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay to each Class member punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants solidarily to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

6. **DECLARE** that all Class members that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

7. **FIX** the delay of exclusion at thirty (30) days from the date of the publication

- of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;
8. **ORDER** the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the “News” sections of the Saturday editions of LA PRESSE, Le Journal de Montreal, the MONTREAL GAZETTE and the National Post;
 9. **ORDER** that said notice be published on the Lasik MD website (<https://www.lasikmd.com>) and Facebook page, in a conspicuous place, with a link stating “Notice of a Class Action”;
 10. **ORDER** the Defendants to send an Abbreviated Notice by regular mail and by e-mail (when the email address is available) to each Class member, to their last known addresses, with the subject line “Notice of a Class Action”;
 11. **ORDER** the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class Members, including their names, addresses, phone numbers and email addresses;
 12. **RENDER** any other order that this Honourable Court shall determine;
 13. **THE WHOLE** with legal costs including publications fees.

Montreal, August 13, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Me Joey Zukran

Attorney for the Applicant

276, rue Saint-Jacques, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: jzukran@lpclex.com

500-06-001028-196

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

CHRISTOPHER OUELLET

Applicant

-vs.-

LASIK M.D. INC. ET ALS.

Defendants

**AMENDED APPLICATION TO AUTHORIZE THE
BRINGING OF A CLASS ACTION AND TO
APPOINT THE STATUS OF REPRESENTATIVE
PLAINTIFF**
(ARTICLES 571 AND FOLLOWING C.C.P.)

ORIGINAL

Me Joey Zukran
LPC AVOCAT INC.
Avocats • Attorneys
5800 blvd. Cavendish, Suite 411
Montréal, Québec, H4W 2T5
Telephone: (514) 379-1572 • Fax: (514) 221-4441
Email: izukran@lpclex.com

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N/D: JZ-204
